IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.7 OF 2002

Shri Girishan Divakaran,
major, married, Indian
National, Junior Engineer,
Electricity Department,
Sub-Division Office,
Calangute, resident of
Cotula, Saligao,
Bardez-Goa. ... Petitioner.

versus

STATE ... Respondent.

Mr. Arun Bras de Sa, Advocate for the Petitioner.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 14TH FEBRUARY,2003.

**ORAL JUDGMENT**

This Criminal Writ Petition has been filed against the Order passed by the learned Judicial Magistrate, First Class, Mapusa, dated 2nd November, 2001, declining to discharge the present Petitioner who is Accused No.1 in Criminal Case No.5/2000/Sr. The learned Trial Court by its Order dated 19th June, 2000, had directed that charge be framed against all the Accused. Against the said Order, some of the Accused had preferred Criminal Revision Application No.48 of 2000 before the Additional Sessions Judge, Panaji.

Original Accused Nos.3, 4 and 6 were discharged. Original Accused No.2 then filed an application under Section 482 of Criminal Procedure Code being Criminal Miscellaneous Application No.52 of 2001 in this Court. This Court by its Judgment dated 13th August, 2001, had allowed the Criminal Miscellaneous Application and had discharged the Accused.

2. The material in the charge-sheet as against the present Petitioner is identical to the material as was available against the Applicant in Criminal Miscellaneous Application No.52 of 2001. The facts in this case are squarely covered by the Judgment of this Court dated 13th August, 2001. Since, one of the Accused is discharged by this Court, the Judgment of this Court discharging the Accused would apply to the present Petitioner. The principal point that was taken into consideration by this Court is that since the principal offenders have been acquitted the abettor alone cannot be proceeded against.

3. In view of the earlier Judgment of this Court, the present Criminal Writ Petition is allowed and prosecution against the present Petitioner for the offence punishable under Section 39(a) of the Indian Electricity Act, 1910 is hereby quashed and the Petitioner stands discharged of the offence with which

he is charged in Criminal Case No.5/2000/Sr. pending on the file of Judicial Magistrate, First Class, Mapusa.

4. Rule made absolute on the above terms with no order as to costs.

P. V. HARDAS, J.

RD.